

WESTERN SLOPE GAS COMPANY

IBLA 73-20

Decided May 1, 1973

Appeal from a Bureau of Land Management State Office decision, C 1533, calling for payment of advance rental for the first five-year period of a natural gas pipeline right-of-way grant.

Remanded.

Appraisals -- Rights-of-Way: Generally -- Rights-of-Way: Act of February 25, 1920 -- Rights-of-Way: Applications

Where a Bureau of Land Management appraiser has not followed the criteria established for calculating the fair market value of rental for right-of-way, the case will be remanded to the Bureau for further consideration.

APPEARANCES: Frank B. Fry, Vice-President and General Manager, Western Slope Gas Company.

OPINION BY MR. HENRIQUES

Western Slope Gas Company has appealed from a decision, dated May 31, 1972, by the Colorado State Office, Bureau of Land Management, insofar as the decision called for payment of \$4,510 as advance rental for the first five-year period for natural gas pipeline right-of-way C 1533. 1/ Appellant contends that the rental charge is excessive and bears no reasonable relationship to the

1/ The State Office decision also called for payment of \$3,900 back rental and \$80 for trespass interest charges for the right-of-way. No appeal was taken for this portion of the decision, which is now final. The company, in its application filed March 15, 1967, explained that it had constructed the pipeline in 1965 and under the original plan, no public land would be affected by the pipeline. During construction it was evident that some use of public land provided a more feasible route, so a total of 4,424 feet of pipeline were laid across public land in T. 5 S., R. 81 W., and T. 8 S., R. 79 W., in two units containing 2.7 acres and 2.35 acres, respectively.

actual value of the land involved. With the appeal is an appraisal report by William E. Martin, an independent real estate appraiser licensed in Colorado. The report attributes lower values to the subject lands than those set by the Bureau's appraiser, and suggests the just compensation for rental for the first five-year period of the right-of-way is \$900.

Examination of the case file discloses that the Bureau appraiser did not use the percentage of rights conveyed as set out in Instruction Memorandum DSC 70-15 of March 15, 1970, in his calculations of the rental value of the right-of-way. The record also indicates that the Bureau appraiser apparently did not consider many of the comparable sales set forth in the Martin report.

Where a Bureau appraiser has not followed the instructions set forth by the Bureau in compiling the fair market value of rental for a right-of-way, and the right-of-way user has appealed the charge as being excessive, supporting his appeal with credible evidence, the case will be remanded to the Bureau of Land Management for further consideration.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside as to the demand for advance rental and the case is remanded to the Bureau of Land Management for a new appraisal and computation of the rental value.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Edward W. Stuebing, Member.

